

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 3483 of 2025

Applicant :- Parmanand And Another

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Maohammd Nadeem

Counsel for Opposite Party :- Ashok Kumar Singh Bais,G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Mr. Mohd Nadeem, learned counsel for the applicants as well as Sri S.K. Singh, learned AGA for the State and Sri AKS Bais, learned counsel for opposite party no.2.

2. A joint statement has been made by learned counsel for the parties that they do not propose to file any affidavit, however, the application be decided on the basis of documents available on record. With the consent of the parties, the application is being decided at the fresh stage.

3. This is an application filed U/s 528 BNSS for quashing the summoning order dated 02.12.2024 passed by Special Judge, POCSO Act/ Additional Sessions Judge, Sambhal at Chandausi in complaint case no. 14 of 2023 (Nempal vs. Parmanand and Ors) U/s 376D, 323, 504, 506 IPC and Section 5/6 POCSO Act, P.S. Rajpura, District Sambhal pending in the court of Special Judge, POCSO Act/ Additional Sessions Judge, Sambhal at Chandausi.

4. Learned counsel for the applicant has submitted that a first information report stood lodged by the opposite party no.2 who happens to be the father of the complainant on 13.06.2023 being FIR No. 0187 of 2023 under Section 376D, 323, 504, 506 IPC read with section 5/6 POCSO Act relating to the commission of the offences on 03.06.2023 wherein the victim who happens to be the daughter of opposite party no.2/ complainant being 17 years of age along with her friend Rubi and aunt Mamta in discharge of the daily duties on 03.06.2023 at 08:00 in the morning had gone along with the cattels then at 11 O'clock on the same day in the morning, the applicants herein caught hold the victim and while pointing a country made pistol on girl, committed bad act. On raising of hue and cry, the villagers who were present over there namely Rubi daughter of Jaiveer and Mamta W/o Harpal came to the rescue of the victim and the applicant thereafter ran away and the victim

could be saved from the clutches from the accused and when the said incident was reported to the complainant/ opposite party no.2, he proceeded to the house of the accused complaining about the bad act committed then they hurled abuses and administered beating pursuant where to a FIR was lodged on 13.06.2023. Post lodging of the first information report, statement of the victim was recorded U/s 164 Cr.P.C. wherein she supported the version contained in the complaint. On 13.06.2023 the victim was subjected to medical examination wherein no external injuries were seen all over the body. The post investigation of a final report was submitted in favour of the accused on 19.06.2023 and, thereafter, a protest petition came to be preferred by the opposite party no.2 which proceeded with the recording of statement U/s 200 Cr.P.C. of the complainant and 202 Cr.P.C. of the victim followed by the statement of the witnesses Rubi and Mamta. Post recording of the statements, the court of Special Judge POCSO Act/ Additions Sessions Judge proceeded to summon the applicants under section 376 D, 323, 504, 506 IPC read with section 5/6 POCSO Act on 02.12.2024.

5. Questioning the summoning order the applicant has preferred the present application.

6. Learned counsel for the applicant has sought to argue that summoning order cannot be sustained for more than one reason. The submission is that first of all once a detailed investigation stood conducted post lodging of the first information report and a final report also stood submitted on 19.06.2023 then it was open for the court below to have taken cognizance on the protest petition while allowing the same and summoning the applicant under the aforesaid penal sections on 02.12.2024. Secondly it is submitted that there has been no consideration of the investigation conducted pursuant to the lodging of the first information report and merely on the basis of the statements of the witnesses under section 200 & 202 Cr.P.C. the applicants have been summoned. Thirdly, though the victim was subjected to medical examination but there is nothing on record to show that any external injuries was sustained by the victim less to say about committing of bad act by the appellant upon victim . Thus it is a open and shut case and interference is required in the present proceedings particularly when there is nothing on record even otherwise to suggest criminality. It is thus prayed that the summoning order be set aside.

7. Sri A.K.S Bais, learned counsel for opposite party no.2 on the other hand contended that post lodging of the first information

report there happens to be a statement under section 164 Cr.P.C. of the victim wherein she had deposed that the applicants had committed the bad act and the Investigating Officer under some influence submitted the final report and post filing of a protest petition, the Magistrate in exercise of the powers so vested upon it treated the case to be a complaint case and recorded the statement U/s 200 & 202 Cr.P.C. which in fact supports the allegations in the first information and summoned the applicants. He submits that he merely because no external injuries were found would not be a ground to throttle the proceedings as even statement of the victim would be sufficient for conviction.

8. Learned AGA on the other hand has adopted the arguments of learned counsel for opposite party no.2 and submits that the summoning order cannot be valid in any manner whatsoever.

9. I have heard the submissions so made across the bar and perused the record carefully.

10. In the present case, this Court is confronted with an order summoning the applicant under section 376D, 323, 504, 506 IPC read with section 5/6 POCSO Act. There are certain broad parameters to adjudge and to determine as to whether the summoning order suffers from any legal infirmity or not. Amongst other one of the criteria inevitably would be the allegations contained in the complaint vis-a-vis, the statement U/s 202 & 202 Cr.P.C. In case, the statement under section 200 & 202 Cr.P.C. supports the prosecution case and there is no material contradiction which goes to the root of the matter then this Court may not interference in the proceeding.

11. Apparently, the allegation contained in the first information report lodged on 13.06.2023 U/s 376D, 323, 504, 506 IPC read with section 5/6 POCSO Act is relatable to an incident dated 03.06.2023 wherein the applicants have been stated to have outraged the modesty of the victim who had gone to perform daily duties which were assigned to her. Further as per the complaint the victim she was accompanied with her friend Rubi and Aunt Mamta. It is also apparent from the first information report that when hue and cry was raised, then the Rubi and Mamta reached the place of incident and after seeing them the accused ran away. Section 164 Cr.P.C. of the statement U/s 164 Cr.P.C. of the victim also narrates the allegation which have been levelled in the FIR regarding outraging the modesty by the applicants. Even otherwise, though the final report came to be submitted but on protest petition, the case transformed into a complaint case and the

statement of the victim U/s 200 & 202 Cr.P.C. itself supports the prosecution case, so much so the statement of the complainant/ first informant under section 200 Cr.P.C. of the complainant under section 202 Cr.P.C. the Rubi daughter of Jaiveer and Mamta W/o Harpal also supports the prosecution case. The court below while summoning the applicants had taken into consideration the statement U/s 200 & 202 Cr.P.C. of the complainant and of the witnesses and also the allegations contained in the first information report and proceeded to summon the applicant.

12. As regards the submissions so raised by the counsel for the applicants based upon the averments and the assertion contained in the supplementary affidavit dated 05.05.2025 that there happens to be animosity and dispute between both the factions which became the matter for lodging of the prosecution case, is concerned suffice is to say that this Court is not required to delve into the said issue as the same may be a matter of trial and one of the defence which can be taken at an appropriate stage.

13. Now the question which would arise is the effect and the impact of submission of final report. Notably there happens to be a statement U/s 164 Cr.P.C. of the victim which also supported the allegations contained in the FIR that the modesty of the victim was outraged by committing bad act. It is a cardinal principle of law that while summoning an accused in a complaint case what would be relevant would be the nature of the allegations in the complaint or the FIR as the case may be and the statement U/s 200 & 202 Cr.P.C. The Magistrate has to record satisfaction that there is no variation or contradiction in the statement so as to outrightly overrule commission of the crime on prima-facie basis. Here the court finds that the court below while summoning the applicants analysed and has taken note of and also considered the statement U/s 200 & 202 Cr.P.C. Vis-a-vis the allegations contained in the complaint/ FIR. What is understandable is that at the stage of summoning, the court is not required to adjudge on the merits of the matter as what is relevant whether even on prima facie basis, the penal provisions stands attracted or not. Once the court below has taken into note the statement U/s 200 & 202 Cr.P.C. and the allegations in the complaint and summoned the applicant then it would be travesty of justice and premature for the court to throttle the investigation at this stage.

14. As regards the submission of learned counsel for the applicants that in the medical examination of the victim, there was no external injuries were found, thus it is a open and a shut case for dropping of the proceeding is concerned, suffice is to say that the

stage of the consideration of the said issue has not arisen particularly, when this court is occasioned with a challenge to the summoning order. What would be the effect, impact and the ramification of the medical report would be tested on its own strength at a stage post conduction of trial when a decision is to be taken as to whether, it is a case of acquittal or conviction.

15. There is another facet of the matter which needs to be noticed i.e. section 29 of the POCSO Act, 2012 according to which where a person is prosecuted for committing, or abetting or attempting to commit any offence under Section 3, 5. 7 and Section 9 of the Act, the Special Court shall presume that such a person has committed or abetted for commit the offence, as the case may be, unless the contrary is proved. The employing of the word "*unless the contrary is proved*" is of grave significance as in a given case, it may be a subject of trial.

16. Looking into the case of the four corners of law, this Court is of the firm opinion that no factual enquiry can be undergone in a proceeding U/s 482 Cr.P.C. as held by Hon'ble Apex Court in the case of ***M/S Neeharika, Infrastructure Pvt. Ltd. vs. State Of Maharashtra and others reported in AIR 2021 SC 192*** and the paragraph no. 23 culled out the following propositions of law which is enumerated hereinunder:-

"i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of

activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for

anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

17. Accordingly, this court finds no justifiable or good grounds to interfere of the summoning order and thus the interference is declined and the present application is hereby rejected.

Order Date :- 12.5.2025

C. MANI

(Vikas Budhwar,J.)